HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT APPEAL NO. 1207 OF 2006

Between:

G. Suryanarayana Reddy

..... Appellant

AND

The Joint Collector – II,
Ranga Reddy District & others

.....Respondents

:: J U D G M E N T ::

Counsel for the appellant : Shri L. Prabhakar Reddy

Counsel for the respondents for : Government Pleader

Revenue

Dated: 15.11.2006

Per G.S.SINGHVI, CJ

This appeal is directed against order dated 23.08.2006 passed by the learned Single Judge in Writ Petition No.17044 of 2006 whereby he declined the appellant's prayer for quashing orders dated 29.10.2003 and 25.02.2006 passed by Inams Chairman-cum-Revenue Divisional Officer, Chevella Division (respondent No.2) and Joint Collector – II, Ranga Reddy District (respondent No.1) respectively under the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 (for short, 'the 1955 Act').

A perusal of the record shows that the appellant filed an application some time in the year 1990 for grant of Occupancy Rights Certificate in respect of land in Survey Nos. 398, 399, 409, 410, 411/1, 411/2, 470 and 579 measuring Acs. 35.02 guntas situated at Malkajgiri Village and Mandal, Ranga Reddy District by claiming that he was the owner in possession. He is said to have purchased the land from Smt. Tajunnisa Begum and her legal heirs – alleged inamdars of the land. Respondent No.2 forwarded the application of the appellant to Mandal Revenue Officer, Malkajgiri. The latter submitted report with the finding that the land in respect of which Occupancy Rights Certificate had been sought by the appellant is wakf land and is in possession of Shri Dargah Hazrath Mir Mahemood Quibls.

After considering the report of the Mandal Revenue Officer, respondent No.2 passed order dated 29.10.2003 whereby he

rejected the appellant's application and granted Occupancy Rights Certificate in favour of Shri Dargah Hazarath Mir Mahamood Saheb Quibls in Form No. III. He also directed the Chief Executive Officer, Andhra Pradesh State Wakf Board to deposit the premium amount of Rs. 1987.50. The appeal preferred by the appellant against the order of respondent No.2 was dismissed by respondent No.1 vide his order dated 25.02.2006. The officer concerned took cognizance of the amendment made in the 1955 Act vide A.P. Amendment Act No.19 of 1994 and held that Occupancy Rights Certificate cannot be granted in respect of the land belonging to charitable and religious institutions.

The appellant challenged the orders passed by respondent Nos. 2 and 1 in Writ Petition No.17044 of 2006 which was dismissed by the learned Single Judge by recording the following observations:

> " A plain reading of the above provisions would show that even when a Charitable and Religious Institution is not in occupation and it is shown that such Institution is entitled to be registered as occupant, no other person can be registered as occupant of such inam land. The second proviso further declares that any ORC in respect of the land held by the Charitable Institution or Religious Institution shall be deemed always to have been null and void and no effect shall be given to such registration. Therefore, even if the allegation that the petitioner has been in possession of the land as on the date of vesting, he cannot be granted ORC. Precisely, for this reason, the first respondent rejected the appeal and the same cannot be faulted on the ground of illegality."

Shri L. Prabhakar Reddy, learned counsel for the appellant reiterated the arguments advanced before the learned Single Judge and submitted that the rejection of appellant's claim for grant of Occupancy Rights Certificate should be nullified because respondent Nos. 2 and 1 and the learned Single Judge failed to take note of the fact that notification dated 09.02.1989 was issued under Section 4(3) of the Wakf Act, 1954 without giving notice and opportunity of hearing to the interested persons. Learned counsel further argued that orders dated 29.10.2003 and 25.02.2006 are liable to be declared as vitiated due to violation of the rules of natural justice because copy of the report prepared by the Mandal Revenue Officer had not been furnished to his client and he was not given opportunity to controvert the same. He submitted that this point was specifically taken in the writ petition, but the same has not been dealt with by the learned Single Judge.

In regard to the second argument of the learned counsel, it is sufficient to observe that no such plea was raised by the appellant before respondent No.1 and no such point was argued before the learned Single Judge. Therefore, even though in the affidavit filed in support of the writ petition, the appellant may have taken up this plea, he will be deemed to have given up the same because at the hearing the point was not pressed before the learned Single Judge. If the learned counsel had argued the point and the same has not been considered by the learned Single Judge, then the proper remedy for the appellant was to file review petition. However, the fact of the matter is that no such petition was filed. Therefore, the petitioner cannot be allowed to raise this

plea in the appeal filed under Clause 15 of the Letters Patent.

We are further of the view that in the absence of any challenge to notification dated 09.02.1989 issued by the State Government under Section 4(3) of the Wakf Act, 1954 vide which the land in question was declared as wakf, the appellant is not entitled to seek Occupancy Rights Certificate.

Another fatal defect with which the writ petition filed by the appellant suffered was that he had not impleaded Shri Dargah Hazarath Mir Mohamood Saheb Quibls which was in possession of the land in question and in whose favour respondent No.2 had passed order dated 29.10.2003 as party to the writ petition. In our considered view, even if the learned Single Judge had found merit in the appellant's challenge to orders dated 29.10.2003 and 25.10.2006, he could not have nullified the same without hearing representative of Shri Dargah Hazarath Mir Mohamood Saheb Quibls.

For the reasons stated above, the appeal is dismissed.

G.S.SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

15.11.2006
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